

# „The National Council of the Judiciary is under attack in different ways“

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Waldemar Żurek Di 11 Okt 2016

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*Is the independence of the judiciary in Poland in danger?*

I think it is. And it is not just about some media and politicians attacking and insulting judges, but about the law which is treated in a way that insults all rules of correct legislation. The most dangerous is questioning of the judgments of the *Constitutional Court*. This is an unprecedented situation, when the government refuses the promulgation of judgments of the Court, although it has a statutory obligation to do so. The independence of the prosecutor's office has been completely obliterated as well, because now its actions completely depend on the will of one man, a politician, the Minister of Justice Zbigniew Ziobro, who can intervene in any criminal case. The refusal of the President Andrzej Duda to appoint ten judges of common courts without one word of justification, also causes great concern. The president also did not receive the oath from three properly selected judges of the *Constitutional Court*. We haven't been in such a situation since the overthrow of communism in 1989.

*The case of the Polish Constitutional Court is well reported in Europe. But what about the body you represent: the National Council of the Judiciary, the constitutional organ to safeguard the independence of courts and judges in general – do you see your constitutional role questioned, too?*

The National Council of the Judiciary is under attack in different ways. In May, we have received a draft bill that would abruptly end the duration of the term of office of all current Council's members who are judges. Interestingly, this law does not apply to the politicians who sit in the Council, the composition of which is mixed. Now, the term of office of members of the National Council of the Judiciary is directly specified in the Constitution, so to change it by means of an ordinary law is a flagrant violation of the constitution. The members of the Council are also put under a different kinds of pressure. After a meeting with the Venice Commission of the Council of Europe held at the request of the Polish Minister of Foreign Affairs, one of the deputies of the ruling party accused the Council that it committed a treason of the state. This accusation so absurd that it is hard to comment on, but it came from the mouth of an important politician.

*Do you think that the Constitutional Court will be able to intervene in this matter?*

If the amendment to the law on the National Council of the Judiciary will be adopted, the Council will certainly bring it before the *Constitutional Court*. I wonder if the Court will have time to settle the matter before its work is completely paralyzed. And even if it does, will the government not ignore its ruling? The government and the parliamentary majority haven't yet decided to bring this bill to the Sejm. Perhaps the reason for this is the fact that they first want to solve the case of the *Constitutional Court*, which is what the Minister of Justice has expressly said when he was asked about the timing of the reform of the judiciary. This situation that takes place in Poland right now is totally mind-boggling, even for the lawyers!

*How would you describe the reputation of the Polish judiciary among the public in Poland?*

Throughout the world the situation of the judiciary is not easy, and in Poland, in addition, we suffer terrible attacks by parts of the media. Good example is the media coverage of an Extraordinary Congress of Polish Judges organized some weeks ago to stand in defense of our constitutional values. It was an unprecedented event, because in a very short time 1,000 judges were mobilized to come to Warsaw to defend the Constitution. Many other judges wanted to come, but for lack of space they could not, so they followed the deliberations on the internet. Interestingly, recent opinion polls from September 2016 show that 44% of Polish citizens have confidence in the courts, while only 23% trust the parliament. However, we are aware that if the attacks on the judiciary will continue for a long time, these relatively good results may be impaired. For the first time we receive public support expressed in many letters, emails and phone calls, though.

*Have you personally experienced pressure or attacks as a representative of the Council or a judge?*

A judge needs a thick skin, but what is happening since the autumn of 2015 is without precedent. When, as a spokesman, I comment in the media on resolutions adopted by the Council or on changes in the law, politicians of the now ruling parliamentary majority try to depreciate my statements by calling them „political“. In Poland, the easiest way to silence a judge is to tape this „political“ patch on his person. It's very unfair because all judges have taken an oath that begins with the words: „Stand on guard of law ...“. Personally, I am attacked in different ways. Most often I receive calls from the restricted phone numbers at different times of the day and night. I recently received email message that threatened me that I would be attacked when I'm with my family shopping at the mall! These types of threats worsen in relation to the number of judges, but the situation has become so serious that some NGOs have begun a program to monitor attacks on the courts. Unfortunately, the example for this comes from the top: the prosecutor initiated an investigation against the President of the Constitutional Court who defends the rule of law, but has discontinued the proceedings regarding reports of citizens who are demanding the publication of the Tribunal's judgment. It shows in the best way the situation that we face. Recent weeks have brought more examples : a Member of the European Parliament of the ruling party has called one judge an „idiot in a robe,“ and the Deputy Minister of Justice, during a private hearing on the alleged violation of his personal rights, threatened the judge with disciplinary action during a truly exemplarily conducted hearing. The Minister of Justice himself, in turn, has without a word of justification has revoked the delegation of a judge to a higher court, obviously because a few years ago he had lost a court case handled by this judge. If politicians attack the courts and judges with impunity, the public is becoming more radical and attacks take ever more drastic form.

*Questions by Maximilian Steinbeis*

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